IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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CIVIL SECOND APPEAL No. 184 of 1997

TURSI LAL
V/S
BADI CHAND & ANS

Mr. MS PANWAR for Mr. DURGA RAM, for the appellant / petitioner

Mr. ANUJ SEHLOT for Mr. MRIDUL JAIN, for the respondent

Date of Order : 5.10.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The sole appellant had died way back on 19.8.2001, and the application for substitution has been filed on 21.4.2005. The reason given for the delay in the application is that the "That the applicants remained unknown with regard to pendency of the appeal before this Hon'ble Court because appellant Tursilal when expired, he did not disclose the fact of pendency of the appeal therefore, the applicants could not be able to take necessary steps for substitution." It is then alleged that the applicants received the letter in the middle of April, 2005, that they are appellant counsel, is not in a position to conduct the matter and instruct or make necessary arrangements for conducting the appeal. Thereupon the applicants are said to have rushed, and then steps have

been taken.

In my view, the story as propounded, on the face of it does not inspire any confidence, for the simple reason, that the deponent of the affidavit in support of the application is a resident of the same place where the suit property is situated, the suit is suit for preemption on the ground of joint party wall, the appeal was filed in the year 1997 only, and the deponent of the affidavit is 48 years of age. In such circumstances, it does not stand to reason that the deponent of the affidavit was not aware of the litigation. This is one aspect of the matter.

The other aspect of the matter is as appears from the order-sheets, the appeal was admitted on 5.11.98, and vide order dt. 15.3.99 the appeal was placed for hearing in due course. Thereafter the matter was listed on 12.8.1999, and was adjourned for one week. Then, it was scheduled to be listed on 11.3.2003, and did come to be listed in the Court on 17.7.2003 on which date it was not reached. Then again on 11.1.2005, it was not reached. On 14.3.2005 it was not reached. In such circumstances, as the learned counsel for the appellant informs to the Court that when the matter was listed in the Court instructions were sought from the appellant. If that is true, then obviously the instructions must have been sought in the year 2003, and there was no occasion for writing the letter in the mid of April 2005.

It clearly appears, that only a story has been cooked up to explain the delay, which is not satisfactorily explained at all.

In that view of the matter, I do not find any ground to set aside the abatement. The abatement being automatic, the appeal is formally dismissed as abated.

( N P GUPTA ),J.

/Sushil/